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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/396,888	09/16/1999	VICTOR A. RIVAS		8050

7590

10/07/2005

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EXAMINER

GRIER, LAURA A

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/396,888

Applicant(s)

RIVAS ET AL.

Examiner

Laura A. Grier

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-27 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,3,6-27 and 29 is/are allowed.
- 6) ☒ Claim(s) 30-37 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 4 is objected to because of the following informalities: claim 4 depends from cancelled claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30, 32 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Fukushima et al., U. S. Patent No. 6123661.

Regarding claim 30, Fukushima et al., (herein, Fukushima) discloses a pair of eyeglasses (display device –14) that include a plurality of infrared LEDs and photosensors (14f/14g – col. 5, lines 12-15 and figure 1), which reads on a pair of glasses, a plurality of light emitting diodes, and a plurality of photosensors, and the electrical circuitry is inherent as evident by the function of the eyeglasses in respect to the function of the LEDs and sensors and a power source (col. 6, lines 12-15).

Regarding claim 32, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima inherently discloses a transmitter on the glasses for transmitting to a remote

receiver as evident by the fact the signal is transmitted to a controller 12 via the photosensor signal processing section (26 – figure 1)

Regarding claim 37, Fukushima et al., (herein, Fukushima) discloses a pair of eyeglasses (display device –14) that include a plurality of infrared LEDs and photosensors (14f/14g – col. 5, lines 12-15 and figure 1), which reads on a pair of glasses, a plurality of light emitting diodes, and a plurality of photosensors, and the electrical circuitry is inherent as evident by the function of the eyeglasses in respect to the function of the LEDs and sensors and a power source (col. 6, lines 12-15), and Fukushima further disclose the determining changes in the amount of reflected light received by the photosensors, wherein a user pulse rate is determined (col. 8, lines 52-67, and col. 9, lines 1-4).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 33-34 and 36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima view of Ryll.

Regarding **claim 33-34**, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses consist of a display. However, Fukushima's display fails to provide the sensed condition of the user.

Ryll disclose a pair of sport goggles that provides real time body monitoring information to user, wherein the information includes the heart rate of the user, which constitutes as a pair of eyeglasses for monitoring heart conditions (figure 1 and abstract). Ryll discloses display (48) in respect to figure 8 that provides a display which may be used in sports goggles for indicated a sensed condition, including a numerical display of the user's heart rate and pulse (col. 6, lines 61-67 and col. 7, lines 1-41).

Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a display the capabilities of display sensed results to the user for the enabling user to be aware of body functions.

Regarding **claim 36**, Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses consist of a power source. However, Fukushima fails to provide the power supply as a battery or solar cells.

Ryll further discloses a battery (42), which constitutes a power supply. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a battery for supplying adequate power to the glasses, wherein batteries are commonly known and used source of power supply.

Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima view of Mathews.

Fukushima discloses everything claimed as applied above (see claim 30). Fukushima eyeglasses fail to discloses on button for user input information.

Regarding the button for user input information, Mathews further discloses mean of inputting preset data of the user to be used for comparing the sensed condition (col. 4, lines 4-54).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Fukushima by providing a means of inputting preset data of the user to be used for comparing the sensed condition, providing optimal monitoring techniques of the user's body functions.

Allowable Subject Matter

Claim 4 is objected based upon the claim objection indicated above, but would be allowable if rewritten to overcome the claim objection.

Claims 2-3, 6-27, and 29 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding **claim 7**, the prior art of record is drawn to a pair of eyeglasses for monitoring or sensing body functions, in particular to heart rate or pulse rate, consisting of light emitting diodes, photosensors, electronic circuitry, a power source, and lighting elements which reads on a plurality of lamps. However, the prior art fails to disclose the photosensors positioned in a plane offset from the plane of the light emitting diodes, therein as claimed.

Regarding **claim 11**, the prior art of record is drawn to a pair of eyeglasses for monitoring or sensing body functions, in particular to heart rate and pulse rate, consisting of light emitting

diodes, photosensors, electronic circuitry, and a power source. However, the prior art fails to disclose the structure and components functionally coupled to the glasses, therein as claimed nor the motivation to combine.

Regarding **claim 22**, the prior art of record is drawn to a pair of eyeglasses for monitoring or sensing body functions, in particular to heart rate or pulse rate, consisting of light emitting diodes, photosensors, electronic circuitry, and a power source. However, the prior art fails to disclose the structure and components functionally coupled to the glasses, therein as claimed nor the motivation to combine.

Response to Arguments

Applicant's arguments with respect to claims 2-27, 29-37 have been considered but are moot in view of the new ground(s) of rejection.

The rejection of claims 2-3, 6-10, has been removed in part to the applicant's arguments.

A new reference of prior art has been provided in respect to the new added claims 30-37. The new reference of prior art relates to a pair of glasses comprising a plurality of light emitting diodes, a plurality of photosensors, and electric circuitry, a power source and determining change in the amount of reflected light.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Grier whose telephone number is (571) 272-7518. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Laura A. Grier
Primary Examiner
Art Unit 2644
10-3-05